

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

THOMAS J. MARTIN, SR. : **CIVIL ACTION NO. 1:09-CV-2332**

: **Petitioner** : **(Judge Conner)**

v. :

**WARDEN RAYMOND LAWLER,
ATTORNEY GENERAL OF THE
STATE OF PENNSYLVANIA** :

: **Respondents** :

ORDER

AND NOW, this 24th day of January, 2010, upon consideration of petitioner's Federal Rule of Civil Procedure 60(b) motion (Doc. 19) for relief from this court's judgment of April 28, 2010, dismissing his petition pursuant to 28 U.S.C. § 2254 as time-barred by the statute of limitations, see 28 U.S.C. § 2244(d) (Doc. 18), on the grounds of mistake, inadvertence, surprise, or excusable neglect, wherein he seeks "to address the mistake concerning the (59) days after December 4, 2004 that he did not know to file a writ of certiorari or petition for review" (Doc. 19, at 2-4), and argues that the statute of limitations should be tolled during this time frame based on denial of effective assistance of counsel during the state court proceedings, the actions of the Clerk of Courts of Schuylkill County and the Pennsylvania Department of Corrections which resulted in him being mistakenly released and led him to believe that his appeal was successful, and denial of access to his legal work while housed in the Restrictive Housing Unit, but that he fails to allege that he was misled by either the Commonwealth or state courts regarding his federal habeas

claim, or that he timely asserted his rights mistakenly in the wrong forum or that he was prevented, in some extraordinary way, from asserting his rights, see Jones v. Morton, 195 F.3d 153, 159 (3d Cir. 1999); Brinson v. Vaughn, 398 F.3d 225, 230 (3d Cir. 2005) such that he would be entitled to equitable tolling, and it appearing that even if the court were to equitably toll the statute for the requested period of fifty-nine days, and extend the expiration of the statute from June 28, 2009 to on or about August 26, 2009, the petition would still be untimely because his federal petition was not filed until November 27, 2009, it is hereby ORDERED that the motion is DENIED.

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge